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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON**

ROLANDO HERNANDEZ,

Plaintiff,

v.

THE CITY OF OTHELLO,
WASHINGTON,

Defendant.

NO.

COMPLAINT AND DEMAND
FOR TRIAL BY JURY

**EXEMPT FROM FILING FEES
UNDER 38 U.S.C. § 4323(h)(1)**

I. PARTIES AND JURISDICTION

1. Defendant, City of Othello, Washington (City”), is a municipality that is located in the Eastern District of Washington. It employed Plaintiff at all times relevant to this lawsuit.

2. Plaintiff, Rolando Hernandez, is a veteran of numerous combat deployments throughout the Middle East. At all relevant times to this lawsuit Mr.

1 Hernandez was a Non-Commissioned Officer in the Washington Army National
2 Guard and resided in Moses Lake, Washington.

3 3. All acts complained of occurred within the Eastern District of
4 Washington.
5

6 4. The Federal Court for the Eastern District of Washington has personal
7 jurisdiction over the parties and subject matter jurisdiction for the claims in this
8 complaint pursuant to 38 U.S.C. § 4323(b), 28 U.S.C. § 1331, 28 U.S.C. § 1367(a).
9

10 5. Venue is proper in the Eastern District of Washington under 38 U.S.C.
11 § 4323(c) and 28 U.S.C. § 1391(b) because the acts and omissions complained
12 herein occurred in the District and Defendant conducts business in this District.

13 6. The administrative prerequisites necessary to file this lawsuit have been
14 satisfied. Regarding Mr. Hernandez's Title VII retaliation claim, Mr. Hernandez
15 timely filed a charge of discrimination with the EEOC on January 18, 2023,
16 received a right to sue letter from the EEOC on March 3, 2023, and has filed his
17 lawsuit within 90 days of receipt of the right to sue letter. Regarding Mr.
18 Hernandez's Washington Law Against Discrimination (WLAD) claims against the
19 City, Mr. Hernandez served the City with a Notice of Tort Claim on February 9,
20 2023, and sixty days have elapsed since service of the Tort Claim.
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III. FACTS

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2 7. Mr. Hernandez grew up in Othello. As a teenager he worked in the
3 farm fields surrounding the community. After graduating high school, he obtained
4 a Criminal Justice and Sociology Degree from Washington State University. Mr.
5 Hernandez then enlisted in the Army. While in the active-duty Army he served in
6 Iraq and Afghanistan as an Airborne Infantryman. After completing his active-duty
7 military service he joined the Washington Army National Guard.
8

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10 8. The City first hired Mr. Hernandez as a reserve police officer in
11 September 2011 wherein Mr. Hernandez worked until September 2013. In
12 September 2013 Mr. Hernandez left the Othello Police Department on good terms
13 so as to take a higher paying job at the Grand Coulee Dam. The Othello Police
14 Department re-hired Mr. Hernandez on August 8, 2016, to work as a police officer.
15

16 9. Up until complaining about sexual harassment (more on that below),
17 Mr. Hernandez had never been in any sort of workplace trouble before. As a police
18 officer with the City he was given the Chief's coin for excellence twice, top DUI
19 enforcer in the department twice, recommended for lifesaver award and was a
20 defensive tactics instructor and a Field Training Officer, responsible for training all
21 new officers fresh out of the police academy. All of his evaluations that occurred
22 before he complained of sexual harassment were at the highest marks.
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1 10. Mr. Hernandez was a member of the Washington Army National
2 Guard during his employment with the City.

3 11. The Army National Guard mobilized Mr. Hernandez to serve in the
4 Ukraine from February 2021 through January 2022.

5 12. Sometime in the January 2021 or February 2021 timeframe a meeting
6 took place. Mr. Hernandez was present at that meeting as was Dave Simmons, the
7 Teamsters Union representative. At that meeting there was discussion about a
8 Sergeant position coming open.
9

10 13. During the March 2021 timeframe another department meeting
11 occurred. Although Mr. Hernandez was mobilized with the military (but had yet to
12 head overseas), he was able to attend virtually. At that meeting the Sergeant's
13 position came up and City of Othello Police Chief Phil Schneck stated he was in no
14 hurry to hire and wanted to pick the right person for the position.
15

16 14. Mr. Hernandez subsequently deployed to Ukraine where his internet
17 service as spotty.
18

19 15. In September 2021 (an unbeknownst to Mr. Hernandez) the City
20 opened the Sergeant position.
21

22 16. Months later Mr. Hernandez learned that Seth Carlson and Jamie
23 Mendoza were selected for Sergeant. Mr. Hernandez also learned that Steven Perez
24 was also offered a Sergeant position but declined it so he could stay as a detective.
25

1 17. At the end of November 2021, a co-worker contacted Mr. Hernandez
2 via WhatsApp and asked if he was interested in the School Resource Officer (SRO)
3 position. Mr. Hernandez found it odd that the department could contact him via
4 WhatsApp about the SRO position but not about the Sergeant opening especially
5 because the Union (Simmons) and Chief knew Mr. Hernandez was interested in the
6 position.
7

8 18. In early to mid-January 2022 Mr. Hernandez reached out to Mr.
9 Simmons and asked if there was anything he could do to compete for the Sergeant
10 position given the fact that he was deployed when the interviewing happened. Mr.
11 Simmons said there was nothing he could do.
12

13 19. Mr. Hernandez returned to work at the Othello Police Department in
14 mid-January 2022 and observed additional (more on that below) concerning
15 behavior regarding Mr. Carlson's interactions with women in the workplace.
16

17 20. On or around Jan 29, 2022, Mr. Hernandez made a formal complaint
18 to Chief Schenck regarding Mr. Carlson. This formal complaint included
19 allegations that Mr. Carlson (a) inappropriately and without permission contacted
20 Mr. Hernandez's sister and girlfriend on different occasions (b) had sexual
21 harassment issues at his prior employer, Wenatchee PD (c) (most recently – January
22 2022) stared at a co-worker's (Evelyn Miron) butt and (d) made other inappropriate
23 sexual remarks.
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1 21. On March 11, 2022, Hernandez and a co-worker, Isaiah Suarez had to
2 physically restrain and arrest a subject. Although the subject made no excessive
3 force complaint and was not injured, Mr. Hernandez and Mr. Suarez filled out a use
4 of force report (per process) and gave it to Claudio Garza, a supervisor. A few days
5 later Mr. Garza told Mr. Hernandez the Chief was going to talk to Mr. Hernandez
6 and Mr. Suarez about what happened, but it, per the Chief, “wouldn’t be an issue.”
7 Customarily, per Mr. Hernandez’s former supervisor (Sgt Josh Silva) if
8 management has a problem with the use of force the issue is addressed in a timely
9 matter.
10
11

12 22. Either on March 14 or March 21, 2022, Mr. Hernandez spoke with the
13 Chief in his office and told him he needed to address the sexual harassment issues
14 in the department. Chief Schneck said there “wasn’t any.” Chief Schneck became
15 upset. The reason Mr. Hernandez (again) mentioned the sexual harassment issues
16 is because of the Sgt Carlson issue (described above) plus Chief Schneck having
17 told Mr. Hernandez previously he wanted Mr. Hernandez to be the School Resource
18 Officer because “some of my officers could not keep their dick in their pants.” Mr.
19 Hernandez brought up instances of an Othello Police Department officer having a
20 scantily clad women ride along with him but hiding the ride-along paperwork as
21 well as the fact that Mr. Carlson improperly tried to contact Sgt Mendoza’s wife
22 just like he contacted Mr. Hernandez’s girlfriend and sister. It became apparent that
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1 Chief Schneck was not happy that Mr. Hernandez was bringing up the topic of what
2 Mr. Hernandez understood to be sexual harassment.

3 23. On March 31, 2022, Mr. Hernandez learned an internal investigation
4 had been created (on March 31, 2022) about the March 11, 2022 incident - - - the
5 incident that the suspect never complained about and the Chief said “wasn’t an
6 issue.”
7

8 24. Mr. Hernandez later spoke with Mr. Garza about the use of Force
9 incident who, in turn, expressed shock that it had become an internal investigation.
10 Mr. Garza reiterated that he said that the Chief was just going to talk with Mr.
11 Hernandez and the other officer regarding the issue.
12

13 25. Mr. Hernandez subsequently received the internal investigation use of
14 force paperwork where he was equally shocked to learn that the paperwork was
15 already marked “sustained” as to Mr. Hernandez and the use of force allegation.
16 However a short time later Mr. Hernandez received, seemingly out of the blue, an
17 email from Assistant Chief Rehamue with the “sustained” mark removed. However,
18 as will be shown below, this was only temporarily.
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21 26. Shortly thereafter Mr. Hernandez would learn that Mr. Garza and Sgt
22 Tomas Solano (Adams County Sheriff) were not interviewed regarding the internal
23 use of force investigation. Mr. Hernandez found this strange because Mr. Solano
24 told Mr. Hernandez that when he (Solano) arrived on the scene he did not see
25

1 anything wrong with Mr. Hernandez's use of force. Mr. Carlson was, however,
2 interviewed even though he wasn't at the March 11th incident.

3 27. Around this time (March – April 2022 or thereabouts) Mr. Hernandez
4 learned that Chief Schneck was asking the acting Sergeant, Claudio Garza, if Mr.
5 Hernandez was “the cancer at the department.”
6

7 28. Mr. Hernandez also learned, via Dispatcher Maria Montalvo, that the
8 assistant chief, David Rahaume, was going through the file cabinet and looking
9 specifically at Mr. Hernandez's reports. And Valerie Lolkus, another Dispatcher,
10 also let Mr. Hernandez know that Sgt McFarlane did not like Mr. Hernandez
11 anymore. Mr. Hernandez understood Mr. McFarlane's reputation to be of one that
12 is against an officer telling on another officer.
13

14 29. On or around April 6, 2022, Mr. Hernandez received his performance
15 evaluation. Unlike every other evaluation he'd had while employed with the City,
16 this evaluation was of minimal standards. This evaluation was also completed by
17 the Assistant Chief, as opposed to Mr. Hernandez's supervisor, Mr. Garza.
18

19 30. On April 6, 2022, Mr. Hernandez received the outcome of the formal
20 complaint that he filed in January 2023. Not only was Mr. Carlson was cleared of
21 all wrongdoing, but the investigation report went on to insinuate Mr. Hernandez
22 may or may not have made up the story. After reviewing the summary of the report,
23 Mr. Hernandez found that his sister and his girlfriend were never interviewed and
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1 the Chief personally interviewed Mr. Carlson even though the Moses Lake Police
2 Department conducted other aspects of the investigation.

3 31. After receiving the mediocre performance evaluation, the outcome of
4 the investigation that insinuated he lied about the Carlson allegations, and having a
5 pending internal investigation (which first came to Mr. Hernandez as already
6 marked “sustained”), Mr. Hernandez assessed that his career at the Othello Police
7 Department was effectively over. In calling out sexual harassment by a fellow
8 officer Mr. Hernandez had betrayed the Thin Blue Line and, from prior examples,
9 knew Chief Schneck would likely try to find a reason to fire him.
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12 32. A few weeks after leaving the department Mr. Hernandez learned that
13 the use of force had (once again) been “sustained.”
14

15 33. A few months after leaving the department Mr. Hernandez learned that
16 Chief Schneck (or someone acting at Schneck’s direction) initiated the process that
17 caused Mr. Hernandez to be placed on the “Brady list” for making what the
18 City/Schneck claimed was a false allegation about Mr. Carlson being a sexual
19 harasser.
20

21 34. The “Brady list” is short hand for a U.S. Supreme Court case that
22 required prosecutors to disclose sustained incidents of officer misconduct (like
23 lying under oath, falsifying reports, tampering with evidence) to defense attorneys.
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1 35. Since Mr. Hernandez is on the Brady list he cannot work in law
2 enforcement. And since his law enforcement career is over he now works a job that
3 pays less in benefits.

4 **IV. CAUSES OF ACTION**

5 **(CAUSE OF ACTION NO. 1 – VIOLATION OF 42 U.S.C. § 2000E-3(A) -** 6 **RETALIATION)**

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8 36. Under Title VII of the Civil Rights Act of 1964 it is an unlawful
9 practice for an employer to retaliate against an employee for complaining of sexual
10 harassment.

11 37. An employee's complaint of sexual harassment does not have to
12 ultimately prove to be true nor reveal underlying legally actionable harassment or
13 discrimination. Instead, for an employee's complaint of sexual
14 harassment/discrimination to receive legal protection the employee must have a
15 good faith reasonable belief that discrimination/harassment was taking place.
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18 38. Mr. Hernandez, in January and March 2023 complained, to Chief
19 Schneck, of predatory behavior on Mr. Carlson's part that included Mr. Carlson
20 staring at the behind of a female worker, Mr. Carlson improperly contacting the
21 relatives of Mr. Hernandez and another co-worker, and Mr. Carlson making
22 inappropriate sexual remarks. Conversely, Mr. Hernandez neither saw or was made
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1 aware of Mr. Carlson staring at the behinds of male employees, contacting the male
2 relatives of co-workers, or saying inappropriate sexual remarks directed at men.

3 39. Mr. Hernandez provided context of his complaint against Mr. Carlson,
4 and the department itself, by reporting that Mr. Carlson had prior harassment issues
5 at the Wenatchee Police Department, that at least one officer had a scantily clad
6 female ride along with him and then covered it up by hiding the ride-along
7 paperwork, and that the Chief, himself, wanted Mr. Hernandez to be the School
8 Resource Officer because “some of [his] officers could not keep their dicks in their
9 pants.”
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12 40. An employer cannot retaliated against an employee for complaining of
13 workplace discrimination/harassment and the City of Othello did just that by,
14 including, (a) placing Mr. Hernandez on the *Brady* list, (b) sustaining the March
15 2022 use of force investigation against him, (c) giving him a subpar performance
16 review, and (d) badmouthing him.
17

18 41. Causation is readily established because the City admits that Mr.
19 Hernandez’s sexual harassment complaint against Mr. Carlson was the reason he
20 was caused to be place on the *Brady* list and the proximity in time between Mr.
21 Hernandez’s complaints and the escalating badmouthing, sustained use of force,
22 and *Brady* list placement coupled with Chief Schenck’s favoritism of Mr. Carlson
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1 in the investigative process is sufficient to show that Mr. Hernandez's complaint
2 was "a but for cause" of the above-referenced retaliation.

3 42. Defendant's actions caused Mr. Hernandez damage to be determined
4 at trial.

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6 **(CAUSE OF ACTION NO. 2 – VIOLATION OF RCW 49.60.210 -**
7 **RETALIATION)**

8 43. Much like Title VII, the WLAD makes it illegal for an employer to
9 retaliate against any person who opposed a practice forbidden by RCW 49.60.030
10 and workplace harassment/discrimination is one such forbidden practice.

11 44. Mr. Hernandez establishes a WLAD retaliation claim for the reasons
12 stated above in the Title VII section but with two important caveats. First, under the
13 WLAD Mr. Hernandez need only establish that his complaints of
14 harassment/discrimination were a substantial factor causing the retaliation. Second,
15 to receive front pay damages for a WLAD retaliation claim Mr. Hernandez does not
16 have to prove constructive discharge.
17

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19 45. Defendant's actions caused Mr. Hernandez damage to be determined
20 at trial.

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22 **(CAUSE OF ACTION NO. 3 – VIOLATION OF 38 U.S.C. § 4311(c)(1) -**
23 **DISCRIMINATION)**

1 46. Under 38 U.S.C. § 4311(c)(1) an employee's military obligation cannot
2 serve as a motivating factor for an employer's decision that is adverse to that
3 employee.

4 47. Mr. Hernandez was a member of the U.S. Armed Services.

5 48. Mr. Hernandez was mobilized with the Army National Guard and
6 during that mobilization the City, knowing that Mr. Hernandez was gone and unable
7 to compete for the Sergeant position, opened the Sergeant position and allowed
8 others to apply and obtain that position.
9

10 49. When Mr. Hernandez returned and asked for opportunity to compete
11 for the position he missed the City, through its agent, denied him the opportunity to
12 compete for the Sergeant position.
13

14 50. The City's actions have caused Mr. Hernandez damages to be proven
15 at trial.
16

17 **(CAUSE OF ACTION NO. 4 - VETERANS DISCRIMINATION**
18 **- VIOLATION OF RCW 49.60.180)**

19 51. Under the Washington Law Against Discrimination an employer
20 cannot take an adverse action against an employee on, *inter alia*, account of that
21 employee's military/veteran status.
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1 52. For the reasons stated above regarding Count 3, the City violated the
2 WLAD by not allowing Mr. Hernandez opportunity to compete for Sergeant
3 because of his military service.

4 53. The City's actions have caused Mr. Hernandez damages to be proven
5 at trial.
6

7 **(CLAIM FOR LIQUIDATED DAMAGES – 38 U.S.C. § 4323)**

8 54. Mr. Hernandez is entitled to liquidated damages under USERRA
9 because the Defendant knew, or showed reckless disregard for whether its conduct
10 was prohibited under USERRA.
11

12 55. To the extent that Defendant alleges application of any agreement that
13 constitutes any limitation on Mr. Hernandez's rights under USERRA, it is illegal,
14 null and void, inapplicable and of no force or effect pursuant to 38 U.S.C. § 4302.
15

16 **V. PRAYER FOR RELIEF**

17 Plaintiff respectfully prays for:

18 A. Compensation for all injury and damages suffered by Mr. Hernandez
19 including, but not limited to, both economic and non-economic damages, in the
20 amount to be proven at trial including back pay, front pay, pre and post judgment
21 interest, lost benefits of employment, adverse tax consequences of any award for
22 economic damages pursuant to Chapter RCW 49.60 et seq., liquidated damages
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1 under federal law for willful violations of USERRA and general damages relating
2 to emotional distress and mental anguish damages as provided by law.

3 B. Plaintiff's reasonable attorneys, expert fees, and costs, pursuant to
4 USERRA, Title VII, the WLAD and as otherwise provided by law under RCW
5 49.48.030.
6

7 C. For such other and further relief as this Court deems just and equitable.

8 Respectfully submitted this 17th day of April 2023.
9

10 /s Matthew Crotty
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